

Remarks

Claims 1-22 and 46-150 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U. S. Patent No. 3,944,342 to Martinez ("Martinez") in view of U. S. Patent No. 5,125,730 to Taylor, et al ("Taylor") and further in view of U. S. Patent No. 4,704,018 to Takhashi ("Takhashi").

Martinez, the primary reference, appears to disclose a tabletop binocular microscope for viewing an eye, wherein one ocular of the binocular microscope receives a photographic film camera. Takhashi appears to disclose a film fundus camera for photographing a fundus of an eye. Taylor appears to disclose a hand held CCD based fundus camera for viewing a fundus of an eye.

According to *MPEP* §2143, three basic criteria must be met to establish a *prima facie* case of obviousness. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

Regarding independent claim 1, independent claim 1 recites:

1. (Previously Presented) An eye viewing device comprising:
 - a housing having an observer end and a patient end;
 - an illumination system at least partially disposed in said housing;
 - an imaging system at least partially disposed in said housing;
 - an image sensor generating image signals;
 - a processor system processing image information corresponding to image signals generated by said image sensor;
 - a module holder defined by said housing at said observer end; and
 - a replaceable module comprising at least said image sensor replaceably received in said holder.

Regarding independent claim 46, independent claim 46 recites:

46. (Previously Presented) An eye viewing device system comprising:
a housing having an observer end and a patient end;
an illumination system at least partially disposed in said housing;
an imaging system at least partially disposed in said housing;
a module holder defined by said housing at said observer end; and
at least first and second replaceable modules, each replaceably receivable in said holder,
said holder adapted to receive one of said modules at a given time, wherein said first module
comprises an eyepiece lens facilitating direct view of an eye structure and said second module
comprises at least an image sensor generating image signals corresponding to an eye structure.

Regarding independent claim 71, independent claim 71 recites:

71. (Previously Presented) A retinal viewing device system comprising:
a hand held housing having an observer end and a patient end;
an illumination system at least partially disposed in said housing;
an imaging system at least partially disposed in said housing;
a module holder defined by said housing at said observer end; and
at least first and second replaceable modules, each replaceably receivable in said holder,
said holder adapted to receive one of said modules at a given time, wherein said first module
comprises an eyepiece lens facilitating direct view of an eye structure and said second module
comprises at least an image sensor for generating image signals corresponding to an eye
structure.

Regarding independent claim 84, independent claim 84 recites:

84. (Currently Amended) A hand held retina viewing device comprising:
a housing;
an image sensor generating image signals;
an imaging system including an imaging axis;
an illumination system configured to project light through a pupil; and
a moving mirror disposed in said housing moveable between a first position at which a
retinal image focal plane is defined at an active surface of said image sensor and a second
position permitting visual viewing of said retina,
wherein said imaging system includes an aperture stop disposed in said housing
substantially coaxially about said imaging axis and substantially conjugate said pupil when said
device is in an operative position.

Regarding independent claim 100, independent claim 100 recites:

100. (Currently Amended) A hand held retina viewing device comprising:
a housing;
an image sensor generating image signals;
an imaging system including an imaging axis;
an illumination system projecting a converging cone of light converging at an apex and
diverging thereafter; and
a moving mirror disposed in said housing moveable between a first position at which a
retinal image focal plane is defined at an active surface of said image sensor and a second
position permitting visual viewing of said retina,
wherein said imaging system further includes an aperture stop disposed in said housing
substantially conjugate to said apex.

Regarding independent claim 116, independent claim 116 recites:

116. (Currently Amended) A hand held retina viewing device comprising:
a housing;
an image sensor generating image signals;
an imaging system including an imaging axis and an aperture stop;
an illumination system including a light source; and
a moving mirror disposed in said housing moveable between a first position at which a retinal image focal plane is defined at an active surface of said image sensor and a second position permitting visual viewing of said retina,
wherein said imaging system further includes an objective lens having a surface closest to said light source curved substantially concentric about a center of an aperture of said aperture stop, whereby internal glare in said device is reduced.

Regarding independent claim 132, independent claim 132 recites:

132. (Currently Amended) A hand held retina viewing device comprising:
a housing;
an image sensor generating image signals;
an imaging system including an imaging axis;
an illumination system projecting a converging cone of light converging at an apex and diverging thereafter;
wherein said imaging system further includes an aperture stop disposed in said housing substantially conjugate to said apex, and
wherein said retina viewing device is configured to facilitate both visual viewing of said retina and electronic image capturing of an image representing said retina.

Regarding independent claim 138, independent claim 138 recites:

138. (Currently Amended) A hand held retina viewing device comprising:
a housing;
an image sensor generating image signals;
an imaging system including an imaging axis and an aperture stop;
an illumination system including a light source;
wherein said imaging system further includes an objective lens having a surface closest to said light source curved substantially concentric about a center of an aperture of said aperture stop, whereby internal glare in said device is reduced, and
wherein said retina viewing device is configured to facilitate both visual viewing of said retina and electronic image capturing of an image representing said retina.

Regarding independent claim 144, independent claim 144 recites:

144. (Previously Presented) A retina viewing device comprising:
a housing;
an imaging system including an objective lens and an imaging lens disposed in said housing through which retinal image forming light rays pass, wherein said imaging system is configured to facilitate visual viewing of said retina and electronic image capture of an image of said retina;
an illumination system configured to project illumination light rays, said illumination system including a light source and said objective lens, wherein at least some of said illumination light rays pass through said objective lens, wherein said light source and said objective lens are disposed in said housing at fixed positions relative to one another, and
wherein said device is configured to be hand held.

The rejections of claims 1-22 and 46-150 are believed to be insufficient and improperly made for a variety of reasons. First, the claim rejections are presented in the form of an omnibus rejection, which is improper under *MPEP* §707(d). Second, the rejections are presented in a form that is inconsistent with the requirements of 37 CFR §1.104, and third, the requirements for *prima facie* obviousness under *MPEP* §2143 have not been satisfied.

MPEP §707(d) states that a plurality of claims should never be grouped together in a common rejection, unless that rejection is equally applicable to all claims in the group.

Notwithstanding *MPEP* §707(d) the entirety of the Examiner's presented rejection of claims 1-22 and 46-150 is as follows:

3. Claims 1-22 and 46-150 are rejected under 35 U.S.C. (103(a) as being unpatentable over U. S. Patent No. 3,944,342 to Martinez ("Martinez") in view of U. S. Patent No. 5,125,730 to Taylor et al ("Taylor") and further in view of U. S. Patent No. 4,704,018 to Takhashi ("Takhashi").
4. Martinez discloses a photographic apparatus for eye viewing with a slit-lamp wherein one ocular of a binocular microscope of the slit lamp is replaceable by a photographic camera module attachment (figs. 2-3) via a mating connector (146, 152) and wherein electrical connection is made between the slit-lamp and the camera attachment via a coaxial cable (136, 138; col. 5, lines 41-64).
5. Martinez does not expressly disclose a hand-held apparatus. Taylor teaches a portable fundus camera (fig. 5). At the time of the invention, it would have been obvious to one of ordinary skill in the art to modify the device of Martinez to be hand-held in order to add portable functionality to the device.
6. Martinez does not expressly disclose a moveable mirror for selection between an imaging and an observation optical path. Martinez does not expressly disclose an aperture stop and an objective lens wherein a surface of said lens closest to the light source is curved concentrically about the center of the aperture stop.
7. Takhashi teaches an eye fundus observing and photographing apparatus wherein a moveable mirror (M2) is operable to select between an imaging path and an observation path (fig. 1). Takhashi also teaches an objective lens (L2) whose surface closest to light source (L) has a center of curvature that is coincident with the position of aperture stop (D). See also fig. 2. At the time of the invention, it would have been obvious to one of ordinary skill in the art to modify Martinez in view of Taylor (sic) to include a moveable mirror in order to switch between imaging and observation functionality as well as to include an objective lens with a anterior surface shaped sufficiently concentric about an aperture stop in order to reduce or eliminate reflections from surfaces within the device (Takhashi, col. 2, lines 60-67). *Office Action dated December 14, 2005, pgs. 2-3.*

It is believed that the rejection of claims 1-22 and 46-150 are presented as an improper omnibus rejection. Claims 1-22 and 46-150 are presented as claims of a single group. However, the presented rejection is not equally applicable to each of claims 1-22 and 46-150. For example, in paragraph 4, the Examiner makes reference to a module attachment.

However, a module attachment is not an element of at least independent claims 84, 100, 116, 132, 138, and 144. In paragraph 5, the Examiner makes reference to a hand held housing. However, paragraph 5 cannot be applicable to every claim since several independent claims such as claims 1, 46, 84, 100, 116, 132, and 138 make no reference to a hand held housing. In paragraph 6, the Examiner makes reference to an aperture stop and an objective lens. However, paragraph 6 cannot be regarded as being applicable to every claim since several independent claims such as claims 1, 46, 71, 84, 100, 116, and 138 make no reference to an aperture stop and an objective lens. In paragraph 7, the Examiner makes reference to a moveable mirror for selection between an imaging and observational optical path. However, paragraph 7 cannot be regarded as being applicable to every claim since several independent claims such as claims 1, 46, 71, 132, 138, and 144 make no reference to a moveable mirror.

In view of the above it is clear that the Examiner has presented a rejection to a group of claims at once where the rejection is not equally applicable to all claims of the group.

Further, in rejecting a claim for obviousness based upon a reference describing inventions other than the invention claimed, the Examiner must designate as nearly as practicable the particular part of the reference relied upon. The pertinence of each reference, if not apparent, must be clearly explained and each rejected claim specified. *37 C.F.R. §1.104(c)*.

While the Examiner has made reference to particular portions of Martinez, Taylor, and Takhashi, the Examiner has not specified any claim with respect to the references cited. If the Examiner will maintain the rejection of claims 1-22 and 46-150, the Examiner is respectfully requested to explain which claims the various rejections apply.

Notwithstanding the apparently informal form of the claim rejections, applicants have attempted to construct the bases for the rejection of each independent claim. In that the Examiner cites Taylor for its teaching of a hand held device, applicants have concluded that the Examiner has applied Taylor against the independent claims reciting a hand held feature;

namely, claims 71 and 144. In that the Examiner cites Takhashi for “concentric curved surface” feature and a moving mirror feature, applicants have concluded that the Examiner has applied Takhashi against independent claims reciting either or both of a curved surface or moving mirror feature; namely, independent claims 84, 100, 116, 138. Accordingly, the applicants have concluded that independent claims 71 and 144 are rejected under 35 U.S.C. §103(a) over Martinez in view of Taylor and that claims 84, 100, 116, and 138 are rejected under 35 U.S.C. §103(a) over Martinez in view of Takhashi. Because independent claims 1, 46, and 132 do not recite any of a hand held feature, a “curved surface” feature or a “moving mirror” feature, applicants have concluded that the claims are rejected under 35 U.S.C. §103(a) based on the teachings of Martinez alone.

After constructing the bases for rejection of each independent claim, applicants evaluated the rejection applied against each independent. In doing so, applicants concluded that the Examiner has not demonstrated a case of *prima-facie* obviousness as to any claim. While MPEP §2143 requires for *prima facie* obviousness that the prior art teach or suggest each and every element of a claim, each independent claim recites combinations of elements not demonstrated by the Examiner to be taught or suggested in the relied upon prior art.

Regarding claim 1, it is believed that the Examiner has rejected claim 1 under 35 U.S.C. §103(a) over the teachings of Martinez. Claim 1 recites among other combinations an image sensor generating image signals, and a replaceable module comprising the image sensor. The Examiner has not demonstrated and has not alleged that the prior art references relied upon have the above combination of features. The Examiner has apparently alleged that Martinez, the primary reference has a replaceable module. However, the examiner has not demonstrated and has not allege that Martinez discloses an image sensor generating image signals as recited in the claims. It appears that Martinez’ photographic element is a film camera (“The camera preferably uses high speed film..,” Martinez, column 7, lines 55-65. While the Examiner has alleged that Martinez has a “photographic camera,” the Examiner has not alleged that any references alone or in combinations has an image sensor generating image signals, and a replaceable module comprising the image sensor. At least

because the Examiner has not demonstrated, and has not even alleged, that the relied upon references alone or in combination teach or suggest an image sensor generating image signals, and a replaceable module comprising the image sensor, it is believed that the Examiner has not demonstrated a case of prima facie obviousness as to claim 1.

Regarding claim 46, it is believed that the Examiner has rejected claim 46 under 35 U.S.C. §103(a) over the teachings of Martinez. Claim 46 recites among other elements “at least first and second replaceable modules, each replaceably receivable in said holder, said holder adapted to receive one of said modules at a given time, wherein said first module comprises an eyepiece lens facilitating direct view of an eye structure and said second module comprises at least an image sensor generating image signals corresponding to an eye structure.” The Examiner has not demonstrated and has not alleged that the prior art references have the above combination of elements. At least because the Examiner has not demonstrated, and has not even alleged that the relied upon references alone or in combination teach or suggest “at least first and second replaceable modules, each replaceably receivable in said holder, said holder adapted to receive one of said modules at a given time, wherein said first module comprises an eyepiece lens facilitating direct view of an eye structure and said second module comprises at least an image sensor generating image signals corresponding to an eye structure,” it is believed that the Examiner has not demonstrated a case of prima facie obviousness as to claim 46.

Regarding claim 71, it is believed that the Examiner has rejected claim 71 under 35 U.S.C. §103(a) over the teachings of Taylor. Claim 71 recites among other elements “at least first and second replaceable modules, each replaceably receivable in said holder, said holder adapted to receive one of said modules at a given time, wherein said first module comprises an eyepiece lens facilitating direct view of an eye structure and said second module comprises at least an image sensor for generating image signals corresponding to an eye structure.” The Examiner has not demonstrated and has not alleged that the prior art references have the above combination of elements. At least because the Examiner has not demonstrated, and has not even alleged that the relied upon references alone or in

combination teach or suggest “at least first and second replaceable modules, each replaceably receivable in said holder, said holder adapted to receive one of said modules at a given time, wherein said first module comprises an eyepiece lens facilitating direct view of an eye structure and said second module comprises at least an image sensor for generating image signals corresponding to an eye structure,” it is believed that the Examiner has not demonstrated a case of prima facie obviousness as to claim 71.

Regarding claim 84, it is believed that the Examiner has rejected claim 84 under 35 U.S.C. §103(a) over Martinez in view of Takhashi. Claim 84 recites among other elements “imaging system includes an aperture stop disposed in said housing substantially coaxially about said imaging axis and substantially conjugate said pupil when said device is in an operative position.” The Examiner has not demonstrated and has not alleged that the prior art references have the above combination of elements. At least because the Examiner has not demonstrated, and has not even alleged that the relied upon references alone or in combination teach or suggest “imaging system includes an aperture stop disposed in said housing substantially coaxially about said imaging axis and substantially conjugate said pupil when said device is in an operative position,” it is believed that the Examiner has not demonstrated a case of prima facie obviousness as to claim 84.

Regarding claim 100, it is believed that the Examiner has rejected claim 100 under 35 U.S.C. §103(a) over Martinez in view of Takhashi. Claim 100 recites among other elements an image sensor...and “an illumination system projecting a converging cone of light converging at an apex and diverging thereafter; and a moving mirror disposed in said housing moveable between a first position at which a retinal image focal plane is defined at an active surface of said image sensor and a second position permitting visual viewing of said retina, wherein said imaging system further includes an aperture stop disposed in said housing substantially conjugate to said apex.” The Examiner has not demonstrated and has not alleged that the prior art references have the above combination of elements. At least because the Examiner has not demonstrated, and has not even alleged that the relied upon references alone or in combination teach or suggest “an illumination system projecting a converging

cone of light converging at an apex and diverging thereafter; and a moving mirror disposed in said housing moveable between a first position at which a retinal image focal plane is defined at an active surface of said image sensor and a second position permitting visual viewing of said retina, wherein said imaging system further includes an aperture stop disposed in said housing substantially conjugate to said apex,” it is believed that the Examiner has not demonstrated a case of prima facie obviousness as to claim 100.

Regarding claim 116, it is believed that the Examiner has rejected claim 116 under 35 U.S.C. §103(a) over Martinez in view of Takhashi. Claim 116 recites among other elements an image sensor...and “a moving mirror disposed in said housing moveable between a first position at which a retinal image focal plane is defined at an active surface of said image sensor and a second position permitting visual viewing of said retina, wherein said imaging system further includes an objective lens having a surface closest to said light source curved substantially concentric about a center of an aperture of said aperture stop, whereby internal glare in said device is reduced.” The Examiner has not demonstrated and has not alleged that the relied upon prior art references have the above combination of elements. At least because the Examiner has not demonstrated, and has not even alleged that the relied upon references alone or in combination teach or suggest “a moving mirror disposed in said housing moveable between a first position at which a retinal image focal plane is defined at an active surface of said image sensor and a second position permitting visual viewing of said retina, wherein said imaging system further includes an objective lens having a surface closest to said light source curved substantially concentric about a center of an aperture of said aperture stop, whereby internal glare in said device is reduced,” it is believed that the Examiner has not demonstrated a case of prima facie obviousness as to claim 116.

Regarding claim 132, it is believed that the Examiner has rejected claim 132 under 35 U.S.C. §103(a) over Martinez alone. Claim 132 recites among other elements an image sensor...and “an imaging system including an imaging axis; an illumination system projecting a converging cone of light converging at an apex and diverging thereafter; wherein said imaging system further includes an aperture stop disposed in said housing substantially

conjugate to said apex.” The Examiner has not demonstrated and has not alleged that the prior art references have the above combination of elements. At least because the Examiner has not demonstrated, and has not even alleged that the relied upon references alone or in combination teach or suggest “an imaging system including an imaging axis; an illumination system projecting a converging cone of light converging at an apex and diverging thereafter; wherein said imaging system further includes an aperture stop disposed in said housing substantially conjugate to said apex,” it is believed that the Examiner has not demonstrated a case of prima facie obviousness as to claim 132.

Regarding claim 138, it is believed that the Examiner has rejected claim 138 under 35 U.S.C. §103(a) over Martinez in view of Takhashi. Claim 138 recites among other elements “an image sensor...and an imaging system...wherein said imaging system further includes an objective lens having a surface closest to said light source curved substantially concentric about a center of an aperture of said aperture stop, whereby internal glare in said device is reduced.” The Examiner has not demonstrated and has not alleged that the prior art references have the above combination of elements. At least because the Examiner has not demonstrated, and has not even alleged that the relied upon references alone or in combination teach or suggest “wherein said imaging system further includes an objective lens having a surface closest to said light source curved substantially concentric about a center of an aperture of said aperture stop, whereby internal glare in said device is reduced,” it is believed that the Examiner has not demonstrated a case of prima facie obviousness as to claim 138.

Regarding claim 144, it is believed that the Examiner has rejected claim 144 under 35 U.S.C. §103(a) over Martinez in view of Taylor. Claim 144 recites among other elements “an imaging system including an objective lens and an imaging lens disposed in said housing through which retinal image forming light rays pass, wherein said imaging system is configured to facilitate visual viewing of said retina and electronic image capture of an image of said retina.” The Examiner has not demonstrated and has not alleged that the prior art references have the above combination of elements. At least because the Examiner has not

demonstrated, and has not even alleged that the relied upon references alone or in combination teach or suggest “an imaging system including an objective lens and an imaging lens disposed in said housing through which retinal image forming light rays pass, wherein said imaging system is configured to facilitate visual viewing of said retina and electronic image capture of an image of said retina,” it is believed that the Examiner has not demonstrated a case of prima facie obviousness as to claim 144.

In addition to all the above, the Examiner has not provided a sufficient reason why the skilled artisan would be motivated to modify Martinez or to combine Martinez with a secondary reference to arrive at a combination recited in any claim.

In attempting to demonstrate that there is motivation to combine Martinez with Taylor, the Examiner recites an advantage of the claimed invention of claims 71 and 144:...”it would have been obvious to one skilled in the art to modify the device of Martinez to be hand held in order to add portable functionality to the device.” In attempting to demonstrate that there is motivation to combine Martinez with Takhashi, the Examiner also recites an advantage of the claimed invention of claims 116 and 138:...”it would have been obvious to one of ordinary skill in the art to modify Martinez in view of [Takhashi]...to include an objective lens with a anterior surface shaped sufficiently concentric about an aperture stop in order to reduce or eliminate reflections from surfaces within the device.” It is respectfully submitted that if a pointing out of features and advantages of a claimed invention were regarded as a bona fide establishing of a motivation to combine references, then such arguments could be deployed in rationalizing the combination of any two references no matter the teachings of the references.

Also in attempting to demonstrate that there is motivation to combine Martinez with Takhashi, the Examiner states that it would be obvious to modify Martinez in view of [Takhashi] “in order to switch between imaging and observation functionality.” It is respectfully submitted that the Examiner has apparently cited Martinez as the primary reference for its combination of observational viewing and photographic functionality.

Accordingly, the rationale suggested by the Examiner for combining Takhashi with Martinez – in order to switch between imaging and observation functionality” is not understood. Specifically, if Martinez already has combined imaging and observation functionality, applicants disagree that there would be motivation to modify Martinez to include such functionality. In addition to the above, for claims 1, 46, and 132 that are apparently rejected under 35 U.S.C. §103(a) over Martinez alone, it appears that the Examiner does not provide any rationale for why a skilled artisan would be motivated to modify Martinez.

For the above reasons, it is believed that the Examiner has not provided a “convincing line of reasoning” for why a skilled artisan would be motivated to modify Martinez.

In order to establish a *prima facie* case of obviousness an Examiner must demonstrate that there is suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art to modify the references or to combine reference teachings. *MPEP* §2143. Under *MPEP* §2144, the strongest rationale for combining references is a recognition, expressly or impliedly in the prior art or drawn from a convincing line of reasoning based on established scientific principles or legal precedent, that some advantage or expected beneficial result would have been produced by their combination. *In re Sernaker*, 702 F.2d 989 (Fed. Cir. 1983). The Examiner must present a convincing line of reasoning supporting the rejections. *Ex parte Clapp*, 227, USPQ 972 (Bd. Pat. App. & Inter. 1985) also cited in *MPEP* §2144. The Examiner must present a convincing line of reasoning as to why the skilled artisan would have found the claimed invention to have been obvious in light of the teachings of the references. *Ex parte Clapp*, 227, USPQ 972, 973 (Bd. Pat. App. & Inter. 1985) cited in *MPEP* §2142.

Regarding the claims discussed herein, the applicants’ selective treatment and emphasis of independent claims of the application should not be taken an indication that the applicants believe that the Examiner’s dependent claim rejections are otherwise sufficient. In fact, it is noted in the office action that the dependent claims are rejected without substantial, and in certain instances, without any reference to the limitations of the dependent claims in

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combination with the base claim elements. In rejecting claims for want of novelty or for obviousness, the Examiner must cite the best references at his/her command. When a reference is complex or shows or describes inventions other than that claimed by the applicant, the particular part relied on must be designated as nearly as practicable. The pertinence of each reference, if not apparent, must be clearly explained and each rejected claim specified. 37 C.F.R. 1.104(c)(2). If the Examiner will maintain the rejections of the claims including the dependent claims, the Examiner is respectfully requested to specify which claims are being rejected when references are discussed. The Examiner is further respectfully requested to specify each claim, including each dependent claim in making the rejections in accordance with the requirements of 37 C.F.R. §1.104. Further, in addition to the above, the Examiner will note that applicants, for purposes of enhancing clarity have amended the image sensor term of claims 84, 100, 116, 132, and 138 so that the image sensor term is recited as an "image sensor generating image signals."

Accordingly, in view of the above amendments and remarks, applicants believe all of the claims of the present application to be in condition for allowance and respectfully request reconsideration and passage to allowance of the application.

If the Examiner believes that contact with applicants' attorney would be advantageous toward the disposition of this case, the Examiner is herein requested to call applicants' representative at the phone number listed below.

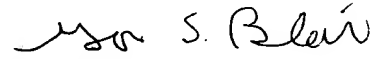
The Commissioner is hereby authorized to charge any additional fees associated with this communication or credit any overpayment to deposit Account No. 50-0289.

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Respectfully submitted,

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